

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8322 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SHANKARLAL DARBARILAL KAHAR

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 21/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Ahmedabad City,
Ahmedabad passed an order in exercise of powers under
Section 3(1) of the Gujarat Prevention of Antisocial
Activities Act (for short PASA Act) on 26-3-1999

directing the detention of the petitioner under the provisions of the PASA Act.

2. The grounds of detention indicate that the detaining authority took into consideration seven cases registered against the detenu under the Bombay Prohibition Act. The authority exercised powers under Section 9(2) of the PASA Act claiming privilege of not disclosing the identity of these witnesses in public interest. The authority recorded subjective satisfaction about the petitioner being a bootlegger and the need for immediately preventing him from continuing his activities which are detrimental to public order. The authority therefore decided to detain the petitioner under PASA as that was the only remedy according to the Detaining Authority which can be resorted to.

3. The petitioner challenges the order of detention on various grounds.

4. Ms. Krishna Mishra appearing for the petitioner submitted that the exercise of power under Section 9(2) of the PASA Act is not proper in the instant case. The Detaining Authority has verified the statements of the anonymous witnesses on 26-3-1999 and the order came to be passed on that very day and therefore there was no sufficient time for the Detaining Authority to arrive at a genuine subjective satisfaction for the need for the exercise of these powers. She pressed into service the decision in the case of Kalidas C. Kahar v. State of Gujarat 1993(2) GLR 1659.

5. Mr. Bukhari, learned AGP has opposed this petition. He submitted that the quickness on the part of the Detaining Authority may not be taken as non application of mind. An attempt is made by the Detaining Authority by filing an affidavit in reply to explain how the order is passed. But barring a statement to the effect that after taking into consideration the material before it and scrutinising the same the order was passed. There is nothing to indicate as to when the proposal was made by the sponsoring authority, when it was received by the Detaining Authority, when the statements were verified, when other material was verified and when the grounds of detention were prepared is not coming forth in the affidavit in reply.

6. The Detaining Authority has exercised the powers under Section 9(2) of the PASA Act and thereby has claimed privilege of not disclosing the identity of the witnesses. These powers are exercised by recording a

subjective satisfaction that the statements made by these witnesses and the fear expressed by them qua the petitioner is found to be correct.

While exercising the powers under Section 9(2) of the PASA Act, the Detaining Authority has also to keep in mind that exercise of powers under Section 9(2) of the PASA Act would deprive the detenu of his right of making an effective representation. He has therefore to consider as to what is to be given preference. Public interest and then exercise of powers under Section 9(2) of the PASA Act and the right of the detenu in exercise of powers under Section 9(2). Each case has to be judged on its own merits and the Detaining Authority has to strike a balance between the interest of the detenu on one hand and the public interest on the other.

For recording satisfaction the authority has to consider the truthfulness and genuineness of the fear expressed by the witnesses. The authority has also to take into consideration the material placed before it for exercising the powers both under Section 9(2) as well under Section 3(1) of the PASA Act. This entire exercise would require time. As it is seen in the instant case, the whole exercise was undertaken at one go in a single day, i.e. 26-3-1999.

7. In view of the decision in the case of Kalidas C. Kahar v. State of Gujarat 1993(2) GLR 1659, there was no time lag between the verification of the statements and the orders passed which could have possibilised for the Detaining Authority to undertake this exercise.

8. The petition is therefore deserves to be allowed and same is hereby allowed. The petitioner-detenu Shankarlal Darbarilal Kahar of Darji's Chawli, Opp. Rohit Mill Khokhra, Amraiwadi, Ahmedabad be set at liberty forthwith if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J)